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No. 88-412

In The
Supreme Court Of The United States

OCTOBER TERM, 1988

MARTIN W. HOFFMAN, TRUSTEE
Petitioner

v.

CONNECTICUT DEPARTMENT OF INCOME MAINTENANCE, ET AL.
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

I. Whether 11 U.S.C. § 106(c) authorizes a trustee in bankruptcy to recover a money judgment against a State when the State has not voluntarily waived sovereign immunity.

II. Whether Congress, in enacting 11 U.S.C. § 106(c), 28 U.S.C. §§ 157(a) and 1334(b), abrogated a State's Eleventh Amendment immunity to suit in federal court by a trustee in bankrupcty.

PARTIES BELOW

The parties before the United States Court of Appeals for the Second Circuit in *In re Willington Convalescent Home, Inc.*, were Martin W. Hoffman, Trustee, as Plaintiff-Appellant, State of Connecticut, Department of Income Maintenance and State of Connecticut, Department of Health Services as Defendant-Appellees and the United States of America as Intervenor-Appellee.*

The parties before the United States Court of Appeals for the Second Circuit in *In re Edward Zera* were Martin W. Hoffman, Trustee as Plaintiff-Appellant, State of Connecticut, Department of Revenue Services, as Defendant-Appellee and the United States of America as Intervenor-Appellee.

* Willington Convalescent Home, Inc. has no parent company, subsidiaries or affiliates.

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124 Cong. Rec. H. 11091 (Sept. 28, 1978) (remarks of Rep. Edwards) S. 17407 (Oct. 7, 1978) (remarks of Sen. DeConcini) reproduced in *Collier on Bankruptcy*, Appendix 3, Ch. IX at IX-90; Ch. X at X-16 (15th ed. 1979) 6, 15-16

Tribe, *Intergovernmental Immunities in Litigation, Taxation and Regulation: Separation of Powers Issues in Controversies About Federalism*, 89 Harv. L. Rev. 682 (1976) 21, 25-26

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The opinion of the United States Court of Appeals for the Second Circuit is reported at 850 F.2d 50 (2nd Cir. 1988) and appears in the appendix to the Petition for Writ of Certiorari at pages A1-A19 (hereinafter "Pet. App.").

The opinion of the United States District Court for the District of Connecticut in *In re Willington Convalescent Home, Inc.* is reported at 72 B.R. 1002 (D. Conn. 1987) and appears in the Pet. App. at A20-A71. The opinion of said Court in *In re Edward Zera* is reported at 72 B.R. 997 (D. Conn. 1987) and appears in the Pet. App. at pages A72-A97.